

SENATE BILL 3276

By McNally

AN ACT to amend Tennessee Code Annotated, Section 8-25-103; Section 8-25-303(a); 8-25-501; 8-34-101(14)(B); 8-34-206; 8-34-320; 8-34-322; 8-34-605; 8-35-116(b); 8-35-118; 8-35-202; 8-36-205(a)(2)(E); 8-36-211; 26-2-105, and Title 8, Chapter 35, Part 2; Title 8, Chapter 36, Part 1; Title 8, Chapter 36, Part 8; and Title 8, Chapter 37, Part 1 relative to pensions and compensation programs for public officers and employees.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 8-25-103, is amended by adding the following as a new subsection (c), and by redesignating the current subsection (c) accordingly:

(c) The commissioner of finance and administration, the chair of the finance, ways and means committee of the senate, the chair of the finance, ways and means committee of the house of representatives, and the chair of the consolidated retirement board shall serve as trustees of any deferred or tax-sheltered compensation plans established pursuant to this chapter on behalf of state employees, including employees of institutions of higher education. The terms of any deferred or tax-sheltered compensation plans established on behalf of state employees, including employees of institutions of higher education, may be modified by the chair of the consolidated retirement board with the concurrence of the commissioner of finance and administration.

SECTION 2. Tennessee Code Annotated, Section 8-25-303(a), is amended by deleting the first sentence thereof in its entirety and by substituting instead the following:

Subject to subsection (c), the state shall provide for employer matching of contributions to the plan on behalf of participating state employees who are eligible to participate in the Tennessee consolidated retirement system, or the optional retirement program established pursuant to chapter 35, part 4 of this title, and on behalf of participating seasonal or temporary state

employees under twenty-five (25) years of age who are paid on the centralized state payroll system.

SECTION 3. Tennessee Code Annotated, Section 8-25-501, is amended by deleting the same in its entirety and by substituting instead the following:

(a) The commissioner of finance and administration and the state treasurer, with the concurrence of the state insurance committee, are authorized to develop and implement a cafeteria plan for state employees as permitted by § 125 of the Internal Revenue Code of 1986, as amended. The commissioner of finance and administration and the state treasurer are further authorized to offer state employees a qualified transportation fringe benefit plan in accordance with Section 132(f) of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended. The responsibility for development and implementation of such plans for employees of institutions of higher education is delegated to the chancellor of the board of regents and to the president of the University of Tennessee for employees of institutions thereunder. Any political subdivision or instrumentality of the state by resolution or ordinance of its governing body is authorized to make available to its employees either a cafeteria plan as permitted by § 125 of the Internal Revenue Code of 1986, as amended, or a qualified transportation fringe benefit plan in accordance with Section 132(f) of the Internal Revenue Code of 1986, as amended, or both.

(b) Any employer who has implemented a cafeteria plan pursuant to this section shall arrange for its employees' health insurance premiums and dental insurance premiums be automatically paid through the cafeteria plan beginning January 1, 2008. Participation in other benefit options provided pursuant to this section is not automatic

and requires an affirmative election by the employee authorizing the necessary payroll deductions and salary reductions for funding such benefits.

(c) Plans implemented pursuant to this section may either be administered internally or the party responsible for such administration may contract with any person or entity otherwise eligible to provide for such services.

SECTION 4. Tennessee Code Annotated, Section 8-34-320(a), is amended by deleting the same in its entirety and by substituting instead the following:

(a) The board of trustees is authorized to appoint a hearing officer, who shall be an impartial employee of the Tennessee treasury department, to conduct contested case proceedings pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, or to request the appointment an administrative judge from the office of the secretary of state to conduct such proceedings.

SECTION 5. Tennessee Code Annotated, Section 8-34-322(b), is amended by deleting the same in its entirety and by substituting instead the following:

(b)(1) Notwithstanding any provision of this title to the contrary, the executive committee shall have the power to disapprove, modify or otherwise change any of the following actions taken by the full board when, in the committee's sole judgment, the disapproval, modification or change is in the best interest of the retirement system:

(A) Establishing the terms of the investment policy for the assets of the retirement system;

(B) Adopting mortality, service and other such tables for the retirement system;

(C) Determining the rate or rates of regular interest for use in calculations relative to the retirement system; and

(D) Determining the employer contribution rate for state employees and teachers.

(2) If the executive committee does not disapprove, modify or otherwise change any such action taken by the full board within thirty (30) calendar days after the action is taken, then the action of the full board shall become effective as of the expiration of such thirty-day period. Notwithstanding this subdivision (2), if the executive committee affirms the action of the full board prior to the expiration of the thirty-day period, then the action shall become effective upon the executive committee's affirmation.

SECTION 6. Tennessee Code Annotated, Section 8-34-605(a), is amended by deleting subdivisions (1), and (2) thereof and by substituting instead the following:

(1) The member must be entitled to reemployment with such employer pursuant to the Uniformed Services Employment and Reemployment Rights Act, compiled in 38 U.S.C.A §§ 4301 - 4334;

(2) The member must not be able to establish the military service in any other retirement system; provided, that this subdivision (a)(2) shall not apply to the extent it is preempted by federal law;

SECTION 7. Tennessee Code Annotated, Section 8-34-605(b)(1)(B), is amended by deleting the same in its entirety and by substituting instead the following:

(B) The member cannot establish the military service in any other retirement system; provided, that this subdivision (b)(1)(B) shall not apply to the extent it is preempted by federal law; and

SECTION 8. Tennessee Code Annotated, Section 8-34-605(c), is amended by deleting the same in its entirety and by substituting instead the following:

(c) Any member or retired member who performed peacetime military service in the armed forces of the United States at any time from October 15, 1940 through May 7, 1975, shall be entitled to establish retirement credit for such military service under the following conditions:

(1) For the member's first year of peacetime military service, the credit shall be on the basis of one (1) day of creditable service for each day of military service rendered. To establish the first year of such military service, the member must pay employee contributions for the service claimed based on a contribution rate of ten and one-half percent (10 ½%). Such rate shall be applied to the member's earnable compensation at the time of the claim or, if not in service at the time of the claim, the member's earnable compensation at termination of employment;

(2) After the first year of peacetime military service, the credit shall be on the basis of one (1) day of creditable service for each two (2) days of military service rendered. To establish such military service, the member must pay employee contributions for the service claimed based on a contribution rate of nine percent (9%). Such rate shall be applied to the member's earnable compensation at the time of the claim or, if not in service at the time of the claim, the member's earnable compensation at termination of employment; and

(3) The member shall be subject to the conditions set forth in subdivisions (b)(1)(A)-(C).

SECTION 9. Tennessee Code Annotated, Section 8-35-116(b)(2), is amended by adding the following new sentences at the end thereof:

Except as otherwise provided in chapter 36, part 8 of this title, no person who has service credit in the retirement system under the provisions of this subsection (b) shall be permitted to draw a retirement allowance from the system if such person continues or returns to service with the county in an employment classification for which the person received service credit under the provisions of this subsection. For purposes of this subdivision, "employment classification" means county general employee, county judge or county official as such terms are defined in § 8-34-101. Notwithstanding anything to

the contrary, on and after January 1, 2009, county officials and county judges may claim prior service credit in the retirement system for service rendered as county general employees only if the county for which they are employed is participating in accordance with the provisions of part 2 of this chapter, and only for such periods of previous service as authorized for other employees of the political subdivision.

SECTION 10. Tennessee Code Annotated, Section 8-35-202, is amended by adding the following new language at the end thereof:

(e) Notwithstanding this section or any other law to the contrary, whenever any retirement law is passed by the general assembly in chapters 34 – 37 of this title which does not increase the aggregate pension liability of all participating political subdivisions combined by more than one percent (1%), then each participating political subdivision shall be automatically covered by the provisions of the law effective the January 1 next following the effective date of the applicable law, unless the governing body of the political subdivision files with the Tennessee consolidated retirement system a notice of that political subdivision's election not to be covered. Any such notice must be filed by no later than the November 1 next following the effective date of the applicable law. For purposes of this subsection (e), "political subdivision" means any employer participating in the Tennessee consolidated retirement system pursuant to chapter 35, part 2 of this title, or § 8-35-116(b).

SECTION 11. Tennessee Code Annotated, Section 8-36-205(a)(2)(E), is amended by adding the following new language at the end thereof:

Notwithstanding this section or any other provision of the law to the contrary, the terms of any resolution to adopt a mandatory retirement age requirement pursuant to this subdivision (a)(2) may include, at the option of the political subdivision, the deferral of the effective date of the mandatory retirement requirement up to the July 1 next following the passage of twelve (12) months from the effective date of the resolution. Provided,

however, no such deferral shall impact the right, if any, that a member may otherwise have to receive the supplemental bridge benefit provided for in § 8-36-211.

SECTION 12. Tennessee Code Annotated, Section 8-36-211(b), is amended by adding the word “or” at the end subdivision (1); by deleting the punctuation and word “; or” at the end of subdivision (2) and by substituting instead a period “.”, and by deleting subdivision (3) thereof in its entirety.

SECTION 13. Tennessee Code Annotated, Section 8-36-805(2), is amended by deleting the first sentence thereof in its entirety and by substituting instead the following:

For temporary employment periods commencing on or after July 1, 2002, the entire compensation payable to such retired member for the work shall not exceed an amount equal to the sum of sixty percent (60%) of the annual full-time salary received by the retired member in the year immediately prior to the member’s last paid day of covered employment, adjusted by five percent (5%) for each year since the member’s last paid day of covered employment or by such other percentage as may be determined by the Treasurer and the Commissioner of Personnel.

SECTION 14. Tennessee Code Annotated, Title 8, Chapter 36, Part 8, is amended by adding the following as a new appropriately designated section:

8-36-8____. Any retired member of the Tennessee consolidated retirement system or of any superseded system administered by the state of Tennessee may accept employment in a position covered under § 8-35-113(c) without loss or suspension of retirement benefits; provided, that:

(1) Such retirement benefits are based on service and salary rendered in a position other than a position covered under § 8-35-113(c); and

(2) The retired member shall not be eligible to claim or accrue additional retirement benefits as a result of such employment.

SECTION 15. Tennessee Code Annotated, Section 8-37-104(a)(9)(A), is amended by deleting the words and figures “five percent (5%)” and by substituting instead the words and figures “ten percent (10%)”.

SECTION 16. Tennessee Code Annotated, Section 8-35-118, is amended by deleting the same in its entirety.

SECTION 17. Tennessee Code Annotated, Title 8, Chapter 35, Part 2, is amended by adding the following as a new appropriately designated section:

8-35-2____. (a) The Tennessee Education Association, the Professional Educators of Tennessee, Tennessee Association of Secondary School Principals, educational television associations, the Tennessee School Boards Association and the Tennessee Secondary Schools Athletic Association shall be participating employers in the Tennessee consolidated retirement system, and shall be liable for the costs incurred as a result of the participation by its administrative employees.

(b) The administrative employees of such associations shall make the same contributions, participate in the same manner, and shall be eligible for the same benefits as employees of local governments participating in the retirement system under this part.

(c) The employees shall be entitled to credit for prior service as approved by the board of directors of the respective association under the same provisions which apply to employees of local governments. Provided, however, they shall be allowed prior service credit for the service with which they were credited under the Tennessee teacher's retirement system as of the day preceding July 1, 1972.

(d) Withdrawal of an association from participation in the retirement system shall be governed by the provisions in this part which apply to local governments.

(e) The retirement system shall not be liable for the payment of retirement allowances or other payments on account of employees of the associations or their

beneficiaries for which reserves have not been previously created from funds contributed by the respective association and/or its employees.

(f) It is the legislative intent that the state shall realize no increased cost as a result of this section. All costs associated with retirement coverage, including administrative costs, shall be the responsibility of the respective association.

(g) The provisions of this section will also apply to the administrative employees of the organization of public school superintendents authorized by § 49-2-2101 when its board of directors officially requests such application.

SECTION 18. Tennessee Code Annotated, Section 8-34-101(14)(B)(i)(b), is amended by deleting the first sentence thereof in its entirety and by substituting instead the following: Such payment is authorized by resolution legally adopted and approved by the chief governing body of an employer participating in the retirement system pursuant to chapter 35, part 2 of this title and that such resolution provides that the payment shall be included as earnable compensation for retirement purposes and is not made for the purpose of increasing a member's retirement benefit or inducing a member to retire.

SECTION 19. Tennessee Code Annotated, Section 8-34-206(b)(1), is amended by deleting subdivisions (E), (F), (G) and (H) thereof and by substituting instead the following:

(E) Employees of employers participating pursuant to chapter 35, part 2 of this title;

(F) Teachers participating in local retirement funds pursuant to chapter 35 of this title; and

(G) County judges and county officials.

SECTION 20. Tennessee Code Annotated, Section 8-34-206(d), is amended by deleting the first sentence thereof in its entirety and by substituting instead the following:

Notwithstanding any other provision of the law to the contrary, any employer participating in the retirement system pursuant to chapter 35, part 2 of this title may assume employee contributions to the retirement system of up to five percent (5%) of the employee's earnable compensation on behalf of all its employees upon the adoption of a resolution by the chief governing body authorizing and accepting the liability therefor.

SECTION 21. Tennessee Code Annotated, Section 8-36-805(5), is amended by deleting the figures “§ 8-35-118” and by substituting instead the words and figures “Section 17 of this act”.

SECTION 22. Tennessee Code Annotated, Section 8-36-823, is amended by deleting the figures “§ 8-35-118” and by substituting instead the words and figures “Section 17 of this act”.

SECTION 23. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 24. This act shall take effect upon becoming a law, the public welfare requiring it.